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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,619	04/15/2004	Renato Miranda	06290/0200906-US0	7866
7278	7590	10/21/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER

3751

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/825,619	MIRANDA, RENATO	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J. Walczak	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Schaich et al. (hereinafter Schaich) in view of Miranda. In regard to claim 1, Schaich discloses a container comprised of a tubular body 10, an end nozzle 12e in the form of a spherical annular bearing, a sphere 11 freely rotating and projecting outwardly from the body and a tubular cap 13, 14 having an end wall (see Figures 1 and 2) fitted to the body for covering the nozzle wherein the inner surface of the end wall defines a concave cradle (see Figure 1) in the form of a spherical colotte in which the sphere is seated when the cap is fitted to the body (see column 3, lines 35-43). Although the Schaich reference does not disclose that the cap (which has a flat upper surface) can act as a seating surface, attention is directed to the Miranda reference, which discloses another ball-type applicator wherein the cap 30 has a flat upper surface in order to enable the cap to act as a seating surface for enabling the device to be stored in an inverted fashion. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the cap and body of the Schaich device can be designed such that the cap can act as a seating surface in order to enable the device

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to be stored in an inverted fashion. It is further noted that statements of intended use, i.e., "for storing and applying liquid deodorant" do not lend any patentable structure to the claims. In regard to claim 2, the concave cradle is defined by a "corresponding median deformation" 13c of the end wall of the cap. In regard to claim 3, the seating surface would inherently be defined by a peripheral annular portion of the end wall.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Miranda. In regard to claim 4, Williams discloses a container comprised of a tubular body 10, an end nozzle 30 in the form of a spherical annular bearing, a sphere 34 retained in the bearing and freely rotatable therein and a tubular cap 24 which covers the end nozzle consisting of an end wall defining a concave cradle in the form of a spherical calotte in which the sphere is seated (see column 3, lines 60-63) and a depending wall which engages the tubular body. Although the Williams reference does not disclose that the cap (which has a flat upper surface) can act as a seating surface, attention is directed to the Miranda reference, which discloses another ball-type applicator wherein the cap 30 has a flat upper surface in order to enable the cap to act as a seating surface for enabling the device to be stored in an inverted fashion. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the cap and body of the Williams device can be designed such that the cap can act as a seating surface in order to enable the device to be stored in an inverted fashion. In regard to claim 5, although the Williams reference does not disclose that liquid deodorant is dispensed from the device, attention is directed to the Miranda reference, which discloses another roller ball applicator wherein

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liquid deodorant is dispensed therefrom in order to enable a user to apply liquid deodorant via a roller ball applicator. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the Williams device can be employed to dispense a liquid deodorant in order to enable a user to apply liquid deodorant via the ball applicator present therein, especially since the Williams reference does not limit the product which can be dispensed by the device and does disclose that the applicator can be used to dispense various cosmetic and medicinal preparations, of which liquid deodorant is one. In regard to claim 6, the cap in the Williams device is formed as a "single structure".

### ***Response to Arguments***

Applicant's arguments filed 8/30/05 have been fully considered but they are not persuasive. The Applicant contends that the Schaich reference is not applicable against claim 1 in that the gasket used to contact the roller ball would not be present when the device is used to dispense liquid deodorant and thereby the ball would not seat in the cap as claimed. It is noted, however, the claim 1 does not claim the liquid deodorant. This claim merely defines a container "for" storing and applying a liquid deodorant. Accordingly, as the device disclosed by Schaich which employs the gasket is capable of dispensing liquid deodorant (perhaps not efficiently, but capable nonetheless), the claimed structure is considered to be taught by Schaich. It is further noted that the Schaich reference does not state that the gasket is not used when the device is used to dispense liquid deodorant but only discloses that the gasket "may" not be necessary

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when the device is so employed. Accordingly, the Schaich reference does suggest that a gasket can be used (i.e., is capable) of being used when liquid deodorant is being dispensed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
10/19/05